The result was announced—yeas 77, nays 20, as follows:

[Rollcall Vote No. 122 Ex.]

YEAS—77

Akaka	Graham	Murkowski
Alexander	Gregg	Murray
Baucus	Hagan	Nelson (NE)
Bayh	Harkin	Nelson (FL)
Begich	Hatch	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Bond	Kaufman	Rockefeller
Boxer	Kerry	Sanders
Brown (MA)	Klobuchar	Schumer
Brown (OH)	Kohl	Sessions
Burris	Kyl	Shaheen
Cantwell	Landrieu	Shelby
Cardin	Lautenberg	Snowe
Carper	Leahy	Specter
Casey	LeMieux	Stabenow
Collins	Levin	Tester
Conrad	Lieberman	Udall (CO)
Corker	Lincoln	Udall (NM)
Dodd	Lugar	Vitter
Dorgan	McCain	Voinovich
Durbin	McCaskill	Warner
Feingold	McConnell	Webb
Feinstein	Menendez	Whitehouse
Franken	Merkley	Wyden
Gillibrand	Mikulski	

NAYS—20

Barrasso	Cornyn	Inhofe
Brownback	Crapo	Isakson
Bunning	DeMint	Risch
Burr	Ensign	Roberts
Chambliss	Enzi	Thune
Coburn	Grassley	Wicker
Cochran	Hutchison	

NOT VOTING—3

Bennett	Byrd	Johanns

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business for 10 or 12 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SECRET HOLDS

Mr. GRASSLEY. Mr. President, I have not listened to every speech on the Senate floor in the last week or so where there has been a lot of talk about secret holds and everything. But since I have been in the Senate working with Senator WYDEN in a bipartisan way over the course of maybe a decade, not to do away with holds but to have a transparency of holds, and seeing those things compromised, and then particularly to see exception taken to what has happened when this side of the aisle has put on holds, and then considering when Senator WYDEN and I did try to do something, that was gutted by people on the other side of the aisle. So I would appreciate it if Democratic Members of the Senate would listen while I explore some of the history so that they know this bipartisan effort, that if it had been done the way Senator WYDEN and I did it before it was gutted, we would not have a lot of problems today that we have.

So I wanted to go into my remarks, but I preface it with what I just said. There has been a lot of talk recently on the Senate floor about secret holds. For a practice with so much bipartisan guilt to go around, it is interesting that the discussion has taken on a partisan tone. Republicans are being accused of being particularly egregious offenders when it comes to circumventing disclosure requirements.

Let me say that if any of my colleagues have holds on either side of the aisle, they ought to have the guts to go public and to go public the minute they put the hold on, not like the mysterious way it is done now, which amounts to nothing. It has been my policy for years to place a brief statement in the CONGRESSIONAL RECORD each time I placed a hold, with a short explanation of why I placed the hold. I did that before there was ever any Wyden-Grassley proposal. The current disclosure requirements for secret holds have been discussed quite a bit lately, as has bipartisan work with Senator WYDEN to address the issue. It is important I give a little background about how we got where we are today.

After many attempts to work with various leaders over the years on policy to make all holds public, Senator WYDEN and I decided the only way to settle this matter once and for all was for the full Senate to adopt a very clear policy. In the 109th Congress, Senator WYDEN and I were successful in passing an amendment to the ethics reform bill by a very wide vote of 84 to 13 to require public disclosure of holds. That bill was never enacted, but the identical provision was included in the ethics bill passed by the full Senate at the very beginning of the 110th Congress. Members may recall the Democrats had just secured a majority in both houses of Congress. Then, in a process that has become all too familiar under the past two Democratic Congresses, there was no conference committee. Instead, in a twist of irony, the so-called Honest Leadership and Open Government Act was rewritten behind closed doors by the Democratic leadership. Lo and behold, the public disclosure provision Senator WYDEN and I had worked so hard on, which the Senate had overwhelmingly adopted on that 84 to 13 vote, had been altered, and altered significantly. Keep in mind, under Article I, section 5 of the Constitution:

> Each House may determine the Rules of its Proceedings . . .

That means that the House of Representatives has no say whatsoever about the Senate rules. When the full Senate speaks on a matter of Senate procedure, that should be the final word, particularly if it is 84 to 13. I want to be clear, the current weak disclosure requirements we now have are not the ones originally proposed by Senator WYDEN and this Senator. In fact, at the time I came to the floor and criticized the specific changes, because I saw they would be ineffective. And ineffective they are.

Let me reiterate some of those criticisms I initially aired to the Senate on two occasions: August 2, 2007, and September 19, 2007. In the version the Senate originally passed, we allowed 3 days for Senators to submit a simple public disclosure form for the record, just like adding oneself as a cosponsor to a bill. This was intended simply to give time to perform administrative functions of getting the disclosure form to the Senate floor, not to legitimize secrecy for the period of 3 days. The rewritten provision gives Senators 6 session days. That might not sound so bad but wait to see how that actually works out in practice. First, it doesn't take a week to send an intern down to the Senate floor with a simple form saying one is putting a hold on a bill. The change I find most troubling is that the 6 days until the disclosure requirement is triggered begins only after a unanimous consent request is made and objected to on the Senate floor. That is too late. I will explain how that is ineffective. By that point, a hold could have existed for quite some time, perhaps without the sponsor of the bill even realizing it. In fact, most holds never get to the point where an objection is made on the floor, because the threat of a hold prevents a unanimous consent request from being made in the first place. So maybe this 6 days is never even triggered.

The original Wyden-Grassley provision required disclosure at the time the hold was placed. That is where it ought to be today. We have heard lately about how the minority party has used the weak disclosure requirements to avoid making holds public. However, this change made it far less likely that majority party holds would ever, in fact, become public. Since the majority leader controls the Senate schedule, he would hardly object to his own request to bring up a bill or nominee. He would simply not bring up a bill or nominee being held up by a member of his own party, and we might never know that there was a hold on it at all.

Why were these provisions changed? Simply, I don't know. I don't know who does know, because I can't be sure who it was who rewrote these provisions in secrecy behind closed doors. The majority party should be careful now, as they complain about Republicans exploiting loopholes in the disclosure requirements for holds. Both parties are guilty of using secret holds. But we can't blame Republicans for the fact that the current disclosure requirements are weak and ineffective. Again, there is plenty of blame to go around when it comes to using secret holds, but I am hopeful this recent attention to the problem can result in a bipartisan consensus to end secret holds once and for all. That is something we